IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4919 OF 2007

Mrs.Malini Arvind Barve ....Petitioner
V/s
Mrs.Sheela Manohar Dhadphale..... ....Respondent.

Mr.Virendra Tulzapurkar, Sr. Counsel with Smt.Anita Agarwal i/by M/s.I.C. Legal, Advocates for the petitioner.

Mr.R.S.Apte i/by Mr.Mandar Limaye, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
17/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of parties.

The present petitioner and respondent No.1 are real sisters. Mother of the petitioner and respondent No.1 by name Sarla Bhalchandra Naigaonkar was owner of the property bearing CTS No.113/7 and a house sanding thereon situated at Prabhat Road, Pune. The mother of the parties had bequeathed house property by executing a will on 20.9.76 whereunder the petitioner and respondent No.1 are given 50% share. Thus after death of the mother the petitioner and respondent No.1 own 50% share in the house property jointly. There is stipulation in the will providing for right of preemption in favour of the daughters. The relevant portion of the will provides : "I direct that the ownership of this bungalow will pass separately to my two daughters above named. If either of them desires to dispose of her share of property she shall give first preference of purchasing the same at the then market price to her sister. If the sister is not willing to so purchase it then

daughter desiring to sell her share of bungalow shall be at liberty to sale the same to any person of her choice." The present petitioner being desirous of selling her share in the property offered the same to respondent No.1. According to the present petitioner respondent No.2 has offered a consideration of Rs.2,99,00,000/- for 50% of share for each of the sisters. The total consideration of the entire plot would thus be in the sum of Rs.5,98,00,000/-. The petitioner offered to sale her 50% share to respondent No.1 at the rate at which the respondent No.2 had shown his willingness and readiness to purchase. Respondent No.1 declined to purchase the petitioner's share at the cost offered by the petitioner on the ground that the price quoted by the petitioner is exorbitant and the same is not the market value. In these facts and circumstances as the respondent No.1 was apprehending sale of 50% share of the petitioner to third party she instituted a suit seeking a relief of fixation of market price of the property and injunction seeking to restrain the present petitioner from alienating or selling her share of the property. The trial Court has granted temporary injunction and the temporary injunction order passed by the trial Court has been confirmed in appeal by the First Appellate Court. Hence the present writ petition has been filed.

2. In this writ petition the prospective purchaser has been impleaded as respondent No.2. He has on affidavit filed stated that respondent No.2 is ready and willing to pay the ;sum of Rs.2,99,00,000/- not only to the present petitioner for the value of her 50% share in the property but has also offered same consideration to respondent No.1 In other words, the respondent No.2 is willing to purchase 50% share of the petitioner in the suit property at Rs.2,99,00,000/- and is also ready and willing to purchase share of respondent No.1 for the said sum of Rs.2,99,00,000/-. To show his bonafides respondent No.2 was directed to produce demand

drafts in the said sum. The respondent No.2 who is appearing in person has shown two demand drafts drawn on Union Bank of India dated 16.8.07 in favour of respondent No.1 for a total sum of Rs.2,99,00,000/-. On a categorical query made to the learned counsel appearing for respondent No.1 as to whether his client respondent No.1 is ready and willing to purchase the share of the petitioner for Rs.2,99,00,000/- he has on instructions of his client stated that respondent No.1 is not in position to purchase share of the petitioner in the property for a sum of Rs.2,99,00,000/-. Respondent No.1 has made counter offer which is put forth by the learned counsel during the course of arguments which is supported by an affidavit filed by respondent No.1. The offer of respondent No.1 is that she is ready and willing to purchase 50% share of the petitioner in the structure and not plot of land. Such partial exercise of option is neither contemplated by the will executed by the mother nor is feasible for the reason that the house is situated on the front portion and if entire house goes to the share of respondent No.1 then rest of the property will not fetch market value. The proposal is not workable and not the one contemplated in the will. Learned counsel has also fairly stated that the respondent No.1 is not ready and willing to sale her share to respondent No.2 for the said price. Then learned counsel for respondent No.1 submitted that the market value referred to in the will would mean the market value arrived at by an authorised valuer and unless and until the said exercise is complete the market value cannot be ascertained and the petitioner should not be permitted to sale her share. It will not be out of place to mention at this juncture that respondent No.2 has reiterated his desire to purchase share of respondent No.1 as well for the said sum but as respondent No.1 is not interested in selling her share in the property no question of purchasing the same by respondent No.2 arises. It is thus evident that the market

price of 50% share in the suit property which has been bequeathed by executing a will by the mother of the petitioner and respondent No.1 jointly in favour of the parties is Rs.2,99,00,000/-.

3. It is thus clear that the petitioner has prima facie performed the obligation cast on her under the will to make an offer to respondent No.1 and as the respondent No.1 has declined to purchase the share of the petitioner at the price which is offered by respondent No.2 the respondent No.1 cannot restrain the petitioner from selling 50% of her share in the property.

4. If the temporary injunction order passed by the Courts below is to be continued the net effect thereof would be depriving the present petitioner of right to dispose of property which the respondent No.1 is not ready and willing to purchase at the market value. Same would defeat the ends of justice. Balance of convenience in this matter lies in favour of the petitioner. If the temporary injunction order is allowed to continue petitioner will be put to suffer irreparable loss. No prima facie case is made out by respondent No.1. The Courts below have committed manifest illegality in granting temporary injunction in favour of respondent No.1. Hence impugned orders need to be quashed and set aside in exercise of writ jurisdiction under Article 227 of the Constitution of India. In the result writ petition is allowed. Impugned orders passed by the trial Court dated 14.5.07 below Ex.5 in RCS No.544/07 and the Appellate Court dated 8.6.07 in Misc. Civil Appeal No.175/07 are quashed and set aside. Rule made absolute in above terms. A this stage it is submitted that this order be stayed for a period of four weeks so as to enable respondent No.1 to challenge the same before the Apex Court. The case of the petitioner is that she is a cancer patient in advanced age. She badly needs to realise money by selling her share in the suit property hence is desirous of selling the same at the earliest. Hence prayer for

stay is rejected.

17.8.07